MT LEGISLATIVE HISTORY

Chapter 194 1983

Bill H _____ S 243 Original bill & hist. ___C

| H. Committee on Taxation | | S. Committee on Taxation | |
|---|---|---|---|
| Hearing Date(s) Mar 11 | ✓C | Hearing Date(s) Feb 09 | ✓C |
| _____ | ___C | Feb 16 | ✓C |
| _____ | ___C | _____ | ___C |
| _____ | ___C | _____ | ___C |
| Date Out Mar 11 | ✓C | Feb 16 | ✓C |

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Did this bill originate in an interim committee? ___Yes ___No

Committee _____ Report _____

SENATE BILL NO. 243

INTRODUCED BY TOWE

BY REQUEST OF THE DEPARTMENT OF REVENUE

IN THE SENATE

| | |
|---|---|
| January 21, 1983 | Introduced and referred to Committee on Taxation. |
| February 16, 1983 | Committee recommend bill do pass as amended. Report adopted. |
| February 17, 1983 | Bill printed and placed on members' desks. |
| February 18, 1983 | Second reading, do pass. |
| February 19, 1983 | Correctly engrossed. |
| February 21, 1983 | Third reading, passed. Ayes, 42; Noes, 8. Transmitted to House. |

IN THE HOUSE

| | |
|---|---|
| March 1, 1983 | Introduced and referred to Committee on Taxation. |
| March 11, 1983 | Committee recommend bill be concurred in. Report adopted. |
| March 14, 1983 | Second reading, concurred in. |
| March 15, 1983 | Third reading, concurred in. |

IN THE SENATE

| | |
|---|---|
| March 16, 1983 | Returned to Senate. Sent to enrolling. |
| | Reported correctly enrolled. |

LC 0365/01

SENATE BILL NO. 243

INTRODUCED BY

BY REQUEST OF THE DEPARTMENT OF REVENUE

A BILL FOR AN ACT ENTITLED: "AN ACT TO PROVIDE FOR A 5-YEAR STATUTE OF LIMITATIONS FOR TAXES ON CENTRALLY ASSESSED PROPERTY, COAL SEVERANCE TAXES, OIL AND GAS SEVERANCE TAXES, MINING LICENSE TAXES, RESOURCE INDEMNITY TRUST TAXES, ELECTRIC ENERGY PRODUCERS' LICENSE TAXES, TELEPHONE COMPANY LICENSE TAXES, FREIGHT LINE COMPANY LICENSE TAXES, COAL RETAILER'S LICENSE TAXES, AND CEMENT TAXES; PROVIDING AN IMMEDIATE EFFECTIVE DATE AND APPLICABILITY DATES."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Statute of limitations. (1) Except as otherwise provided in this section, no deficiency may be assessed or collected with respect to the year for which a return is filed unless the notice of additional tax proposed to be assessed is mailed within 5 years from the date the return was filed. For the purposes of this section, a return filed before the last day prescribed for filing is considered as filed on the last day. If the taxpayer, before the expiration of the period prescribed for assessment of the tax, consents in writing to an assessment after that time, the tax may be assessed at any time prior to the expiration of the period agreed upon.

(2) No refund or credit may be allowed or paid with respect to the year for which a return is filed after 5 years from the last day prescribed for filing the return or after 1 year from the date of the overpayment, whichever period expires later, unless before the expiration of the period the taxpayer files a claim therefor or the department of revenue has determined the existence of the overpayment and has approved the refund or credit thereof. If the taxpayer has agreed in writing under the provisions of subsection (1) to extend the time within which the department may propose an additional assessment, the period within which a claim for refund or credit may be filed or a credit or refund allowed if no claim is filed is automatically extended.

(3) If a return is required to be filed and the taxpayer fails to file the return, the tax may be assessed or an action to collect the tax may be brought at any time. If a return is required to be filed and the taxpayer files a fraudulent return, the 5-year period provided for in subsection (1) does not begin until discovery of the fraud by the department.

Section 2. Codification instructions. Section 1 is intended to be codified as an integral part of Title 15, chapters 23 (part 1), 35, 36, 37 (parts 1 and 2), 38, 51,



INTRODUCED BILL

SB 243

53, 55, 58, and 59 (parts 1 and 2), and the provisions of Title 15, chapters 23 (part 1), 35, 36, 37 (parts 1 and 2), 38, 51, 53, 55, 58, and 59 (parts 1 and 2), apply to section 1.

Section 3. Effective date -- applicability. (1) This act is effective on passage and approval and, except as provided in subsection (2), applies retroactively within the meaning of 1-2-109 to taxable years beginning after December 31, 1977.

(2) Subsection (3) of section 1 is retroactively applicable within the meaning of 1-2-109 for all taxable years prior to the effective date of this act.

-End-

FORTY-EIGHTH LEGISLATIVE SESSION

COMMITTEE ON TAXATION (SENATE)



| SENATE BILL NO. | ENTERED COMM. | DATE CONSIDERED | OUT OF COMM. | DO PASS DATE | DO NOT PASS DATE | DO PASS AS AMEND. DATE | BE CONCURRED IN DATE | BE CONC. IN AS AMENDED DATE | BE NOT CONCURRED IN DATE |
|---|---|---|---|---|---|---|---|---|---|
| 146 | 1/14/83 | 1/24/83 | 1/28/83 | 1/27/83 | | | | | |
| 159 | 1/14/83 | 2/4/83 | 2/23/83 | | | 2/23/83 | | | |
| 163 | 1/15/83 | 1/27/83 | 1/28/83 | 1/27/83 | | | | | |
| 172 | 1/17/83 | 1/31/83 | | Tabled on 2/22/83 | | | | | |
| 185 | 1/18/83 | 1/31/83 | 2/2/83 | | | 2/2/83 | | | |
| 186 | 1/18/83 | 1/28/83 | 2/1/83 | | | 2/1/83 | | | |
| 187 | 1/18/83 | 1/26/83 | Tabled on 1/27/83 pending receipt of other bills. | | | | | | |
| 189 | 1/18/83 | 1/28/83 | 1/31/83 | 1/28/83 | | | | | |
| ~~202~~ 204 | ~~1/25/83~~ 1/19/83 | ~~2/9/83~~ 2/9/83 | ~~2/21/83~~ 2/21/83 | 2/21/83 | 2/19/83 | | | | |
| 227 | 1/19/83 | 2/9/83 | 2/16/83 | 2/16/83 | | | | | |
| 231 | 1/20/83 | 2/10/83 | 2/21/83 | | 2/21/83 | (do not pass as amended) | | | |
| 241 | 1/21/83 | 2/8/83 | 3/1/83 | | | 2/28/83 | | | |
| 242 | 1/21/83 | 2/3/83 | 2/17/83 | | | 2/17/83 | | | |
| 243 | 1/21/83 | 2/9/83 | 2/16/83 | | | 2/16/83 | | | |
| 244 | 1/21/83 | 2/7/83 | 2/22/83 | | | 2/22/83 | | | |
| 247 | 1/21/83 | 2/15/83 | 2/16/83 | | | 2/16/83 | | | |

(Use Separate Sheet for Senate, House Bills, and Resolutions)

(NOTE: These sheets indicate the status of the bills heard from time to time; the [illegible] all of the dates on which the respective bills were discussed.)

CONSIDERATION OF SENATE BILL 243: Senator Thomas Towe, Senate District 34, said SB 243 imposes a statute of limitations for the taxes you see listed in the title for attempting to collect refunds and past taxes. These presently have no statute of limitations, and the Department of Revenue suggested there ought to be one. It is an opportunity to cut off the time in which the state can come back and claim more taxes from a taxpayer. The state is forever barred from collecting taxes unless notice of additional tax to be assessed is mailed within 5 years from the date the return was filed. In subparagraph 2, the same thing applies for refunds to taxpayers. If by consent or agreement in writing, the taxpayer extends the time within which the department may propose an additional assessment, that will control. If an additional assessment is made within the 5-year limitation, that automatically extends the time for claiming a refund (page 2, lines 12-15). In paragraph 3, if a taxpayer fails to file a return, the department can assess or collect at any time. If a return is fraudulent, the 5 years begins with the discovery of fraud by the department. Section 3 of the bill makes it retroactive to taxable years beginning after December 31, 1977. The 5-year statute is consistent with other statutes of limitations and gives the Department of Revenue sufficient time to perform audits that need to be performed.

PROPONENTS

Dan Bucks, from the Department of Revenue, spoke in favor of the bill. He said there presently is a 10-year statute of limitation for centrally assessed property. The statute of limitations for corporation license and income taxes and personal income taxes is 5 years. They would like to establish a 5-year statute of limitations for all of these taxes. The courts could interpret that the 2-year statute of limitations applies, but there is no specific litigation that establishes that the 2-year statute applies.

Some companies assert that the Department of Revenue not only has to assert the taxes but has to start collection of those taxes within two years of assessment. The department would have a major problem there.

This bill is consistent with the corporation license tax and will establish certainty as to the length of time to keep tax records. It will change the net and gross proceeds taxes from a 10-year statute to a 5-year statute of limitations.

OPPONENTS

George Bennett, representing the Montana Mining Association, said there is a statute of limitations for all of the taxes listed in this bill. (See Exhibit 3 .)

In the Caterpillar Tractor case, the Department of Revenue asserted taxes back to 1957. Would you like the Department of Revenue to come back to you and have you put it all together for them for the past 20 years? We went to court over it, and Caterpillar Tractor won. Where a tax law does not either grant to the Department of Revenue or continue a statute of limitations, then the generic statute of limitations of 2 years applies. The 2-year statute of limitations applies now. The Internal Revenue Code statute of limitations is 3 years. Mr. Bennett requested that this not be made retroactive. When the resource indemnity trust fund was established, James Madison from the Department of Revenue, who was present at the meeting today, adopted regulations to guide taxpayers as to how to compute the resource indemnity trust tax. Taxpayers have computed the tax based on those regulations ever since the tax was applied. The Montana Administrative Procedures Act has repealed the guidelines established by Mr. Madison, and the Department of Revenue wants to go back and use SB 243 as a basis on which to assess taxes on some taxpayers.

The constitution states that the legislature shall pass no law regarding considerations already passed. (1972 Montana Const., art. V, §11(1)) Do you feel that the years already closed by a statute of limitations should be reopened to reassess taxes? He said SB 243 is a "Build Montana" bill from the Department of Revenue's point of view. It will drive everyone into bankruptcy or out of state. They think if you can afford to pay taxes, you are enjoying some privileges you shouldn't have.

Ward Shanahan, a member of the tax committee of the Montana Mining Association, said they, too, were concerned that this statute of limitations might be made retroactive. They have issues pending before the Department of Revenue and they are relying on the 2-year statute of limitations with respect to taxes. Having a 5-year statute of limitations for all of the taxes would eliminate the uncertainties that exist now.

Bob Gannon, representing the Montana Power Company and Western Energy Company, said they have been assessed based upon the new rules and are in a separate situation from the others. The Department of Revenue is attempting to revoke the rules Mr. Madison made. There is no question that there is no other statute that applies but the 2-year statute. That has been in Montana law since 1895. This is not cited in the Caterpillar case, but the Montana Supreme Court has recognized it since no other statute provides otherwise. There is a need for finality in keeping a company's books open. Now, the 2-year statute applies. Under normal situations, the statute of limitations is tolled by filing of a complaint. Here, sending a deficiency letter tolls the statute. Montana Power Company is subject to assessment that goes back to 1967. In 1977, the legislature changed the taxes for centrally assessed property. If we were sent a letter now, the Department of

Revenue could reach back to 1973 to revive liabilities they think are there. As Senator Keating said, laws are made to prevent litigation. (See Exhibit C.)

Mr. Gannon said he didn't know if 5 years was necessary. He said they sent a letter to the Department of Revenue in August 1980 and they have sent four letters since then. They have had no answer from the Department of Revenue to their correspondence, and if that is why they need more time, forget it! He thought 3 years was appropriate but did not feel retroactivity was necessary.

Dennis Burr, representing the Montana Taxpayers Association, said the bill is more complicated than it seems on its face. In the net proceeds area, there is always litigation to establish what is due. When dealing with negotiated taxes, they should be prospective and not retroactive, unless a return is fraudulent, in which case the Department could go back 5 years.

Questions from the committee were called for.

Senator Towe asked Mr. Bucks to respond to the opponents' comments. Mr. Bucks suggested making the provisions retroactive to the taxable years after December 31, 1980. He also said that the case he was referring to earlier was a corporation license tax case. They do not have the staff that the IRS has, so they need 5 years to accomplish the auditing they would like to do, rather than 3 years. The Department of Revenue has six auditors in the natural resources program which covers $300 million a year in state and local revenues.

The hearing was closed on SB 243.

CONSIDERATION OF SENATE BILL 227: Senator Thomas Towe, Senate District 34, said this bill was requested by the hard-rock mining impact board. In section 90-6-303(4), the administrative and operating expenses of the board are paid from the revenue generated from the license tax on metal mines. We made an appropriation in the special session, and it needs a tracer. SB 243 poses to repeal the requirement that the metal mines license taxes go to the general fund. Under new section 3, the taxes would be placed into the earmarked revenue fund to the credit of a hard-rock mining impact account for all money specifically appropriated to that account and the excess to the general fund.

PROPONENTS

Gary Buchanan, director of the Department of Commerce, supported the bill.

Ann Mulroney, representing the Montana League of Women Voters, said they support the bill to the extent that it will pay for the administrative and operating costs of hard-rock mining impact programs, which are addressed in a series of other bills.

OPPONENTS

There were no opponents to SB 243.

Questions from the committee were called for.

Senator Towe felt the fiscal figures ($968,000 for 1984; $482,000 for 1985) were wrong because of the Sunshine Mine in Three Forks and the ASARCO Mine in Libby; it will be closer to $2 million. The money now goes into the general fund.

The hearing was closed on SB 227.

CONSIDERATION OF SENATE BILL 202: Senator Thomas Towe, Senate District 34, sponsored this bill. We might have problems if we get a large synfuel plant or some other major coal development that requires more than the 8.75% that is allocated to the coal severance tax trust fund. It is important for us in defense of our coal tax and trust fund to tie in the trust fund to the impacts. More significantly, last Thursday, Senator Dixon from Illinois introduced a bill in Congress which in effect reverses the Montana Supreme Court's decision that you don't have to go to trial to determine the coal tax.

We found out that the legislative fiscal analyst (LFA) and the governor's budget office made a mistake regarding the small business investment credit. They thought it was repealed altogether, but we had not done so. It meant a $6 million difference. Now, the budget with both sides coming in shows $10 million in there. If we want to reintroduce the small business investment credit we have to find $6.5 million in the budget. That really limits us; we have repealed a statute by budgetary action.

If we do have an impact because of Tenneco with a synfuel plant, we have no mechanism to give to the budget office to budget for that. The formula in SB 202 asks the Department of Commerce to find out how many people are projected to be employed in coal development for the next biennium. The budget office will have to make available from coal severance tax interest income the funding described in section 4 of the bill. This allows us to point out that all income from the trust fund is tied to impacts. Even though $5 million is a small amount, at least we have established the procedure. The bill in the 1981 session provided for accumulation, which Senator Towe said he was against.

PROPONENTS

Senator Eck said that under Governor Judge's administration, they projected large scale development in Montana. There were three scenarios: (1) start with conversion of all coal in Montana at site of production, (2) we are mining a million tons a year

ROLL CALL

SENATE TAXATION COMMITTEE

48th LEGISLATIVE SESSION -- 1983 Date 2/9 /8

| NAME | PRESENT | ABSENT | EXCUSED |
|---|---|---|---|
| SENATOR GOODOVER, CHAIRMAN | ✓ | | |
| SENATOR McCALLUM, VICE CHAIRMAN | ✓ | | |
| SENATOR BROWN | ✓ | | |
| SENATOR CRIPPEN | ✓ | | |
| SENATOR ELLIOTT | ✓ | | |
| SENATOR GAGE | ✓ | | |
| SENATOR TURNAGE | ✓ | | |
| SENATOR SEVERSON | ✓ | | |
| SENATOR HAGER | ✓ | | |
| SENATOR ECK | ✓ | | |
| SENATOR HALLIGAN | ✓ | | |
| SENATOR LYNCH | ✓ | | |
| SENATOR NORMAN | ✓ | | |
| SENATOR TOWE | ✓ | | |
| SENATOR MAZUREK | ✓ | | |

DATE February 9, 1983

COMMITTEE ON TAXATION

VISITORS' REGISTER

| NAME (PLEASE PRINT) | REPRESENTING | BILL # | Check One: Support | Check One: Oppose |
|---|---|---|---|---|
| GEORGE T. BENNETT | MONT. MINING ASSN | SB 243 | | Amend |
| Ann Mulvaney | League of Women Voters | 202 | | X |
| Patti Yedlicka | Assessor's Assoc. | SB 204 | X | |
| Bill McCraig | W. R. Grace & Co. | SB 243 | | Unless Amend |
| [illegible] | [illegible] | | | |
| [illegible] | Sen Dist 32 | SB 204 | ✓ | |
| [illegible] | [illegible] | [illegible] | ✓ | |
| [illegible] | [illegible] | 204 | ✓ | |
| Jim MacKler | Mt. Coal Council | 243 202 | 204 | ✓ ✓ |
| Pat Wilson | Montco/Thermal Energy | 202 | | — |
| Jim Hughes | MTN SEC | 243 | | — |
| Nancy L Leifer | MT. Dept of Commerce | 227 | ✓ | |
| M Campbell/Paul Hahn | | 202 | | ✓ |
| Dennis Burr | Montana Taxpayers Assoc | 243 | | ✓ |
| Don Hoffman | Dept. of Revenue | 243 | ✓ | |
| Don Bucks | Dept. of Rev. | 243 | ✓ | |
| James Madison | Dept of Revenue | 243 | ✓ | |
| Jesse Munro | Dept of Revenue | 204 | | |
| Connie Kennedy | Aide - Sen Tveit | ALL | | |

B

NAME: GEORGE T. BENNETT SB 243 DATE: 2/9/83

ADDRESS: 404 FULLER HELENA

PHONE: 442-8950

REPRESENTING WHOM? HE IS A MEMBER OF TAXATION COMM. MT. MINING ASS'N

APPEARING ON WHICH PROPOSAL: SB 243

DO YOU: SUPPORT? _____ AMEND? X OPPOSE? _____

COMMENTS: THE STATUTE OF LIMITATIONS FOR THE TAXES SET FORTH IN THE BILL SHOULD BE 3 (not 5) YEARS.

THE BILL SHOULD NOT BE GIVEN RETROACTIVE EFFECT TO YEARS CLOSED BY STATUTE.

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

FEBRUARY 9, 1983
SB 243



*Appeal from District Court, Gallatin County; F. K. Armstrong, Judge.*

ACTION by the Board of County Commissioners of Custer County against Nelson Story, and action by the Board of County Commissioners of Custer County against Nelson Story and Walter D. Story. By agreement of the parties the causes were consolidated and tried together. From judgments for defendants, plaintiff appeals. Affirmed.

*Mr. C. B. Nolan,* and *Mr. James Donovan, Attorney General,* for Appellant.

*Mr. A. J. Campbell,* for Respondents.

THE HONORABLE J. B. LESLIE, District Judge of the Eighth Judicial District, sitting in the place of Mr. Justice Milburn, delivered the opinion of the court.

These actions were instituted against the defendants in the district court of Custer county on the 6th day of August, 1897. Subsequently a change of venue was ordered by said court to the district court of Gallatin county.

In the first-named action a recovery is sought against the defendant therein named on account of unpaid taxes assessed against him by the authorities of Custer county for the year 1889, amounting to the sum, with penalty added, of $759. The second action is similar in character. In two separate causes is alleged the default of the defendants in the payment of taxes assessed against them by the county authorities of Custer county for the years 1890 and 1892, amounting to the sums, with penalties added, respectively, of $7,087.15 and $187. Said sums sued for are alleged to have matured in the respective years of their assessment. To each cause answer was made traversing the material allegations, and, in addition, as against each cause of action, that statute of limitations was pleaded. By agreement of the parties the causes were consolidated, and

tried together by the court below sitting without a jury. At the conclusion of plaintiff's testimony the defendants moved for a nonsuit upon the ground that it affirmatively appeared that the actions were barred by the provisions of Subdivision 2 of Section 42 of the First Division of the Compiled Statutes, as amended by Section 1 of the Act of the Third legislative assembly, approved March 10, 1893 (Laws 1893, p. 50), which motion was sustained by the court, and judgment in favor of the defendants entered accordingly. From that judgment the plaintiff prosecutes this appeal.

No question having been raised touching the authority of plaintiff to bring these actions in the name of the board of county commissioners, its capacity to sue is assumed for the purposes of this appeal.

In addition to the material averments of the complaint, it is further alleged, relative to the property on account of which the taxes sued for were assessed, that it "was at all times while within said county situate upon the Crow Indian reservation, and that after said tax was assessed and levied and became delinquent the treasurer of said county plaintiff frequently attempted to go upon said reservation to collect said tax, and was at all times before the removal of said property from the said county hindered and prevented from so entering upon said reservation and collecting said tax by distraint of said property by the United States Indian agent and by the United States authorities in charge of said reservation, and by the injunction orders in said matter made and issued by the United States circuit court of the Ninth circuit in and for the district of Montana, and was by the action of said federal authorities and said federal court wholly prevented from seizing and distraining the property of defendants." A careful examination of the testimony had at the trial fails to disclose any proof offered in support of this contention. Whether these averments were incorporated in the pleadings for the purpose of taking the causes out of the operation of the statute of limitations it is [illegible] the alleged hindrance, if

established, would have upon the statute, is unnecessary to determine. The sole question presented by this appeal is whether the statute of limitations runs against the state, or a subdivision thereof, in an action to recover a judgment for an unpaid tax claim,—whether said Subdivision 2 of Section 42, as amended, contravenes the provisions of Section 39, Article V, of the Constitution.

The statutory and constitutional provisions which have application to and must determine the question under consideration are as follows: Section 28, First Division, Compiled Statutes of 1887: "Civil actions can only be commenced within the periods prescribed in this title after the cause of action shall have accrued, except where, in special cases, a different limitation is prescribed by statute." Section 42, *Id.*, as amended: "An action upon a liability created by a statute, other than a penalty or a forfeiture, shall be commenced within two years." Section 49, *Id.*: "The limitations prescribed in this act shall apply to actions brought in the name of the territory, or for the benefit of the territory, in the same manner as to actions brought by private parties." The section last quoted, as carried into Section 520, Code of Civil Procedure, reads: "The limitations prescribed in this chapter apply to actions brought in the name of the state, or for the benefit of the state, in the same manner as to actions by private parties." Section 39, Article V, of the Constitution: "No obligation or liability of any person, association or corporation held or owned by the state, or any municipal corporation therein, shall ever be exchanged, transferred, remitted, released or postponed or in any way diminished by the legislative assembly; nor shall such liability or obligation be extinguished except by the payment thereof into the proper treasury."

Legislative intent is manifest from the language of Section 49, *supra*, that the statute should operate with equal force against an action by the state, or for the use and benefit of the state, as against a private individual. If demands of the character of those in suit are "liabilities created by statute," and

the sections of the statute above quoted are not repugnant to the provisions of the constitution, it logically follows that the lower court properly held that appellant's right to proceed by action was barred.

Is the obligation to pay a tax demand levied and assessed by the proper authorities, and in accordance with legislative direction, a "liability created by statute"? That it is such a liability is well supported by reason, and is, almost without exception, the view adopted by courts of last resort. The state, as an incident of its sovereignty, possesses the power to impose upon persons and estates within its jurisdiction their just and proportionate share of the expenses and burdens of maintaining its existence and effecting its objects, limited only in the exercise of this power by constitutional restrictions. This power to tax is strictly legislative, and its exercise must ensue from the mandate of the law-making branch of the government in the establishment of fixed and general rules insuring, as near as may be, exact impartiality and equality in the distribution of the common burden. The process by which this exaction from the individual or the estate is accomplished is the product of statutory enactment. The duty imposed is characterized and defined by and dependent upon the legislative will, and is a liability created by statute. Some of the numerous decisions adopting this construction are *Bristol* v. *Washington County*, 177 U. S. 147, 20 Sup. Ct. 585, 44 L. Ed. 701; *State* v. *Mining Co.*, 14 Nev. 226; *City and County of San Francisco* v. *Jones* (C. C.), 20 Fed. 188; *San Francisco* v. *Luning*, 73 Cal. 610, 15 Pac. 311; *County of Redwood* v. *Winona & St. P. Land Co.*, 40 Minn. 515, 42 N. W. 473; *Pine County* v. *Lambert*, 57 Minn. 203, 58 N. W. 990; 19 Am. & Eng. Enc. Law, (2d Ed) p. 282, and cases cited; Cooley on Taxation, 435.

A demand for taxes being a liability created by statute, the next inquiry is, do the provisions of said Subdivision 2 of Section 42, as amended, and Section 49, conflict with Section 39, Article V, of the Constitution? This question must be answered in the negative. The inhibitory words of the constitu-

tion are that no obligation or liability in favor of the state shall be "exchanged," "transferred," "remitted," "released," "postponed," "diminished," "extinguished." That the terms "exchanged" and "transferred" can have no application to the subject herein must be conceded; nor does the statute "postpone," or suspend for a time, the remedy for the enforcement of payment, giving a temporary respite to the debtor, to be followed by a revival of the right to collect from him; nor can a diminution follow from the statute canceling a part of the debt and leaving in force a part. If there is any conflict in the statute, it must be found in the remaining words "remitted," "released," "extinguished," and which, for the purposes of this case, may be considered as convertible terms prohibiting a cancellation of obligations of the class embraced in the constitution. The statute relied on by the defendants, which limits the right to sue within two years after the maturity of the demand, does not operate to remit, release, or extinguish the obligation. With respect to personal actions for the recovery of debt, statutes of limitation are not statutes of release or liquidation; they affect the remedy, and not the right. (*Guiterman* v. *Wishon*, 21 Mont. 461, 54 Pac. 566; Cooley, Const. Lim. p. 447; 19 Am. & Eng. Enc. Law (2d Ed), p. 147, and cases cited.)

While plaintiff's right to proceed by action is lost by delay, the debt is not extinguished, and the officers authorized so to do may pursue the other remedies provided by law and enforce collection. The laws of this state provide a summary method of seizure and sale of personal property and sale of realty for enforcing payment of taxes, and also authorize the bringing of a common-law action for the recovery of a personal judgment against the delinquent taxpayer. Neither of these remedies is dependent on the other for its existence or efficiency. The proceeding by action is a remedy in addition only to the others named; but for the statute creating it, the remedy would not exist. The lawmaking power, having authority to prescribe or withhold altogether a particular remedy, may, in its enactment, invest it with such restrictions as will, in its judgment,

best subserve the public good. Were there no statute authorizing the bringing of an action to collect a tax debt, and the legislature, in its wisdom, deemed it expedient to make provision for such a remedy, could it be reasonably contended that in the enactment of such a law the constitutional provision relied on by the plaintiff would stand in the way of a proviso that the action should be brought within a specified time, else the right to sue be denied? Or would the power of the legislature be questioned to repeal altogether the existing right to proceed by action, leaving the remedies of distraint and sale to be pursued by the collecting officers?

The power to sue for delinquent taxes existed at the adoption of the constitution, authority therefor being found in Section 9 of the Act of the Sixteenth legislative assembly of the territory, approved March 14, 1889, p. 225, and likewise, at the same time, the statute limiting the period within which such actions might be brought was in force. If it had been the intention of the framers of the constitution to exempt the state from the operation of statutes of limitations, it would have been an easy matter to incorporate a clause to that effect in the instrument.

More than two years having elapsed between the maturity of each of the claims sued on and the commencement of the actions, the lower court properly sustained the motion of the defendants for a nonsuit. The judgment is therefore affirmed.

*Affirmed.*

MR. CHIEF JUSTICE BRANTLY: I concur.

MR. JUSTICE PIGOTT: I concur.

MR. JUSTICE MILBURN, having been of counsel in other undetermined causes presenting the same question here involved, does not participate in the foregoing opinion.

As to the maxim, *"nullum tempus occurrit regi,"* see notes in 48 Am. Rep. 24; 101 Am. St. Rep. 144.

DISPOSITION OF SENATE BILL 247: Senator Lynch moved that SB 247 DO PASS. The motion was seconded. Senator Towe made a substitute motion that SB 247 be amended as follows:

Page 3, line 25.
Following: "applicable"
Insert: "only"
Strike: "retroactively within the meaning of"

Page 4, line 1.
Strike: "1-2-109"

Page 4, line 2.
Following: "1983."
Insert: "It is to be applied retroactively within the meaning of 1-2-109 for such periods."

The motion was seconded.

Senator Turnage asked if it was the intent that the bill have no prospective application. Senator Towe replied that it should be applied only to those taxable years. Senator Himsl's bill and others take care of 1983 forward.

A voice vote was taken on Senator Towe's substitute motion to amend, and it passed unanimously.

A vote was then taken on Senator Lynch's motion that SB 247, as amended, DO PASS. It passed unanimously.

DISPOSITION OF SENATE BILL 227: Senator Towe moved that SB 227 DO PASS. The motion was seconded. This bill allows the first portion of the metalliferous mines license tax to go to the Hard Rock Mining Impact Board and the rest to the general fund. The legislature has to determine how much money goes into it. Page 3, lines 11 and 12, of the bill says "specifically appropriated." It will be about $104,000 in FY 1984 and $106,000 in FY 1985. The tax is around $2 million a year. We could amend HB 718.

A vote was taken on Senator Towe's motion, and it passed unanimously.

DISPOSITION OF SENATE BILL 243: Senator Towe discussed amendments to be made on page 3 of the bill as follows:

Page 3, line 8.
Following: "taxable"
Strike: "years beginning"
Insert: "periods covered by returns due"

Page 3, line 9.
Strike: "1977"
Insert: "1980"

That makes it clear that we are talking about the statute of limitations running for the period governed by the returns due after 1980. It would not have retroactive effect.

Senator Norman asked if fraudulent returns were covered now. Senator Turnage said it covered five years from the date of discovery of the fraud. Senator McCallum thought all of them should have 3-year statutes of limitations. Senator Towe pointed out that all state statutes of limitations are five years. Federal laws have statutes of limitations of three years.

Senator Elliott asked if "fraudulent" was defined in the state statutes. He said the Internal Revenue Code says a return is fraudulent if 25% or more of gross income is not reported. Committee members checked the Montana Code Annotated and found no definition of "fraudulent."

Senator Crippen recalled that George Bennett raised a question concerning retroactivity. Senator Towe said that in the Cate-pillar case, a 2-year statute would apply if no other statute of limitation was specifically set out. Mr. Bennett said would apply; the Department of Revenue said may apply. In regard to claims based on a state return, and in the absence of any specific statute, that one (27-2-211(c), MCA) governs. James Madison's guidelines made more of a net proceeds tax than a gross proceeds tax. The Department felt that that could not be justified, and now it is gross proceeds again. This bill might allow them to expand their statute of limitations.

Senator Towe moved that the following amendments to SB 243 be adopted:

Page 3, line 8.
Following: "taxable"
Strike: "years beginning"
Insert: "periods covered by returns due"

Page 3, line 9.
Strike: "1977"
Insert: "1980"

The motion was seconded and passed unanimously.

Senator Towe then moved that SB 243 DO PASS AS AMENDED. The motion was seconded, and a roll call vote was taken. The bill passed 8-6, with Senator Halligan being absent at the time the vote was taken. The roll call vote sheet is attached to the standing committee report attached to these minutes.

Senator Severson stated that he would be absent from the meeting on Saturday, February 19, and requested that he go on record as voting in favor of SB 384 and SB 252. Chairman Goodover stated he would allow it this time, but that that was not going to become a practice of the committee members.

Upon motion duly made, the meeting was adjourned at 10:05 a.m.

_____
Chairman

SENATE TAXATION COMMITTEE

48th LEGISLATIVE SESSION -- 1983 Date 2/16 /83

| NAME | PRESENT | ABSENT | EXCUSED |
|---|---|---|---|
| SENATOR GOODOVER, CHAIRMAN | ✓ | | |
| SENATOR McCALLUM, VICE CHAIRMAN | ✓ | | |
| SENATOR BROWN | ✓ | | |
| SENATOR CRIPPEN | ✓ | | |
| SENATOR ELLIOTT | ✓ | | |
| SENATOR GAGE | ✓ | | |
| SENATOR TURNAGE | ✓ | | |
| SENATOR SEVERSON | ✓ | | |
| SENATOR HAGER | ✓ | | |
| SENATOR ECK | ✓ | | |
| SENATOR HALLIGAN | ✓ | | |
| SENATOR LYNCH | ✓ | | |
| SENATOR NORMAN | ✓ | | |
| SENATOR TOWE | ✓ | | |
| SENATOR MAZUREK | ✓ | | |

...h to minutes

MR. PRESIDENT

We, your committee on taxation

having had under consideration Senate Bill No. 243

Respectfully report as follows: That Senate Bill No. 243

introduced bill, be amended as follows:

1. Page 3, line 8.
Following: "taxable"
Strike: "years beginning"
Insert: "periods covered by returns due"

2. Page 3, line 9.
Following: "31,"
Strike: "1977"
Insert: "1980"

And, as so amended
DO PASS

Pat M. Goodover Chairman.

STATE PUB. CO.
Helena, Mont.

SENATE COMMITTEE TAXATION

Date Feb 16, 1983 Senate Bill No. 243 Time 10:00

| NAME | YES | NO |
|---|---|---|
| SENATOR GOODOVER, CHAIRMAN | | ✓ |
| SENATOR McCALLUM, VICE CHAIRMAN | | ✓ |
| SENATOR BROWN | ✓ | |
| SENATOR CRIPPEN | | ✓ |
| SENATOR ELLIOTT | ✓ | |
| SENATOR GAGE | | ✓ |
| SENATOR TURNAGE | | ✓ |
| SENATOR SEVERSON | ✓ | |
| SENATOR HAGER | | ✓ |
| SENATOR ECK | ✓ | |
| SENATOR HALLIGAN | Absent | |
| SENATOR LYNCH | ✓ | |
| SENATOR NORMAN | ✓ | |
| SENATOR TOWE | ✓ | |
| SENATOR MAZUREK | ✓ | |

Secretary: Barbara J. Effing Chairman: Pat M. Goodover

Motion:

Moved that SB243 as amended do pass.

(include enough information on motion—put with yellow copy of committee report.)

STATUS SHEET

TAXATION COMMITTEE

48th Legislature

| Bill No. | Subject Matter | Date In | Sponsor | Hearing Date | Committee Action | Date Ou |
|---|---|---|---|---|---|---|
| SB 243 | AN ACT TO PROVIDE FOR A 5-YR STATUTE OF LIMITATIONS FOR TXS. ON CENTRALLY ASSESSED PROPERTY COAL SEV. TAXES, OIL & GAS SEV. TAXES, MINING LIC. TAX .... | 3-1-83 | Towe | 3-11-83 | BE CONCURRED IN | 3-11-83 |
| SB 244 | AN ACT REQUIRING A SEPARATE TAX ON CERTAIN LUMP-SUM DISTRIBUTION PAYMENTS.... | 3-3-83 | Towe | 3-14-83 | BE CONCURRED IN | 3-22-8 |
| SB 247 | AN ACT TO CLARIFY THAT RAILRD. RETIREMENT ACT BENEFIT PYMNTS. RECEIVED DURING CLAIM PERIODS BEGINNING IN 1981 OR 1982 AS A RESULT OF FULFILLMENT OF FED. S.S. REQUIREMENTS ARE NOT TO BE INCLUDED AS INCOME... | 3-1-83 | Brown, B. | 3-7-83 | BE CONCURRED IN | 3-15-8 |
| SB 250 | AN ACT TO GENERALLY REVISE THE LAWS RELATING TO THE BD OF HSG AUTHORIZING THE ISSUANCE OF TXBLE OR TAX EXEMPT BONDS.... | 3-3-83 | Goodover | 3-14-83 | TAKEN OUT OF THIS COMMITTEE AND REFERRED TO ANOTHER COMMITTEE | |
| SB 252 | AN ACT PROVIDING FOR AN INVEST. CREDIT AGAINST THE INDIVIDUAL INCOME TAX AND THE CORPORATE LICENSE TAX..... | 3-7-83 | Goodover | 3-14-83 | TABLED | 3-21- |
| SB 264 | AN ACT TO ALLOW THE DEPT. OF REVENUE TO IMPUTE A VALUE ON COAL WHENEVER THE OPERATOR OF A MINE SUBJECTS THE COAL TO PROCESSING THAT IMPROVES ITS QUALITY | 3-7-83 | Graham | 3-17-83 | BE CONCURRED IN | 3-21- |

Form CS-32
1-81

fund for hard-rock mining. Why couldn't we just take the money for Board expenses out before it is put into the general fund. Senator Towe said it is a matter of six of one and a half-dozen of another. This process is a little clearer.

REPRESENTATIVE ASAY asked in what areas this money for the Board is spent. Ms. Leifer said the Board is required to be an arbitrating board. The Board meets many times a year to put together new rules and guidelines and the budget for the Board allows for the Board to meet eight times per year.

CHAIRMAN YARDLEY said this committee passed HB 446 which earmarks money into several trust funds. How does that relate to this bill? Senator Towe said money provided for in HB 446 would also be put to the credit of the hard-rock mining account and this bill would provide for that to happen. Jim Oppedahl, legislative researcher, said 25% of the money provided for in HB 446 for this purpose is taken from the general fund and is allocated for impacts and expenses of the Board. Chairman Yardley asked if this bill (SB 227) is necessary. Senator Towe said if HB 446 passes, this bill would not be necessary. Both bills would not be necessary. You may want to put a codification instruction on this bill that if HB 446 passes, this bill would not be necessary.

The hearing was closed on SB 227.

SENATE BILL 243

SENATOR TOM TOWE, District 34, sponsor of the bill, said SB 243 is an act to provide for a 5-year statute of limitations for taxes on centrally assessed property, coal severance taxes, oil and gas severance, taxes, mining license taxes, resource indemnity trust taxes, electric energy producers' license taxes, telephone company license taxes, freight line company license taxes, coal retailer's license taxes, and cement taxes. Senator Towe said there is a general statute of limitations but not a specific statute of limitations for the tax section. The general statute of limitations says any obligation arising by statute has a two-year statute of limitations. That is an insufficient amount of time for the Department of Revenue to get out and perform audits on companies. This would be the same statute of limitations as on income tax but not on property tax. Five years will be the statute of limitations for almost everything but property taxes. If parties involved consent, in writing, to assessment after the five years, that would be fine.

The same five-year statute of limitations would apply to refunds. If no claim for refund is filed within five years, the company forfeits the refund.

This act would not apply in cases where someone fails to file a return or if the return is filed but is fraudulent. This act

also applies retroactively to periods after 1980. So, it picks up returns already filed.

Proponents

DAN BUCKS, representing the Department of Revenue, said this bill will facilitate proper compliance and administration of the tax laws. This bill will provide businesses with a definite statute of limitations. The bill will also give the taxpayer a consistent set of statutes of limitations and will set up a definite period as to how long the records for a company have to be kept open.

There were no opponents testifying against SB 243.

SENATOR TOWE closed his presentation on SB 243.

The hearing was closed on SB 243.

CHAIRMAN YARDLEY called the meeting into Executive Session at this time.

EXECUTIVE SESSION

Senate Bill 243

REPRESENTATIVE BERTELSEN moved SB 243 BE CONCURRED IN.

The motion was voted on and PASSED unanimously. Representatives Harp, Abrams, Keenan, Harrington, Underdal, Ream and Nordtvedt were excused during the time of the vote.

CHAIRMAN YARDLEY said he would carry SB 243 in the House.

The meeting was adjourned at 11:00 a.m.

DAN YARDLEY, Chairman

Vicki Lofthouse, Secretary

VISITORS' REGISTER

HOUSE TAXATION COMMITTEE

BILL SB 243 Date March 11, 1983

SPONSOR Senator Towe

| NAME | RESIDENCE | REPRESENTING | SUPPORT | OPPOSE |
|---|---|---|---|---|
| Helena Rabinow | Shelby | Co Supt | | |
| Helena Jensen | Choteau | Co Supt | | |
| Ann Bullington | Helena | MT Society of CPAs | X | |
| Earl D. Loiselle | Libby | W.R. Grace #6 | | X |
| Mike Holland | Helena | Kindred Holland #6 | X | |
| Dan Fowler | Helena | Montana Mining Assn | | X |
| Geneva Palladichuk | | | | |
| Dan Burke | Helena | Dept. of Rev. | | |
| Jad Dale | Dillon | Mont. Min. Assoc. | | X |

IF YOU CARE TO WRITE COMMENTS, ASK SECRETARY FOR LONGER FORM.

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Form CS-33
1-81

STANDING COMMITTEE

March 11, 1983

MR. SPEAKER:

We, your committee on TAXATION

having had under consideration SENATE Bill No. 243

Third reading copy ( Blue color )

A BILL FOR AN ACT ENTITLED: "AN ACT TO PROVIDE FOR A 5-YEAR STATUTE OF LIMITATIONS FOR TAXES ON CENTRALLY ASSESSED PROPERTY, COAL SEVERANCE TAXES, OIL AND GAS SEVERANCE TAXES, MINING LICENSE TAXES, RESOURCE INDEMNITY TRUST TAXES, ELECTRIC ENERGY PRODUCERS' LICENSE TAXES, TELEPHONE COMPANY LICENSE TAXES, FREIGHT LINE COMPANY LICENSE TAXES, COAL RETAILER'S LICENSE TAXES, AND CEMENT TAXES; PROVIDING AN IMMEDIATE EFFECTIVE DATE AND APPLICABILITY DATES."

Respectfully report as follows: That SENATE Bill No. 243

XXXXXXX DO PASS BE CONCURRED IN

DAN YARDLEY, Chairman.

STATE PUB. CO.
Helena, Mont.